IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 989 of 2003
To
FIRST APPEAL No. 993 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DY.GENERAL MANAGER - Appellant(s)
Versus
PATEL HARIBHAI AMBALAL & 1 - Defendant(s)

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Appearance :
MR RR MARSHALL for Appellant(s) : 1,
MR AJ PATEL for Defendant(s) : 1,
MR SUNIT SHAH G.P. with MR NIRAJ SONI A.G.P. for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 14/03/2007

ORAL COMMON JUDGMENT

1. These appeals arise from the common judgment and award made by the learned Extra Assistant Judge, Mehsana in Land Reference Cases No. 2771/1996 to 2775/1996 dated

13th August, 2002. Hence, they are heard together and they are now being disposed of by this common judgment.

2. These appeals are filed by the Deputy General Manager, Oil and Natural Gas Corporation Limited, Mehsana Project, Mehsana. The contesting respondents are the original applicants [hereinafter referred to as the "applicants"]. Their lands are situated at village Kasalpura, Taluka and District Mehsana. Since they were required for the purpose of drilling wells, request was made to the Government to acquire the same. Hence notification under Section 4 of the Land Acquisition Act, 1894 [the "Act" for short] was published on 7th April, 1994 and declaration under Section 6 of the Act was made on 4th April, 1995. Respondent no. 2 the Special Land Acquisition Officer by his award dated 5th January, 1996 determined the market value of the lands at Rs.3.90 paise per sq. mtr. Being dissatisfied with the same, the applicants submitted application under Section 18 of the Act to the Collector for making reference to the District Court. Accordingly references were made. They were numbered as Land Reference Cases no. 2771/1996 to 2775/1996. Before the District Court the applicants claimed Rs.20=00 per sq. mtr.

3. At the hearing the Court framed issues at Exh. 9, on the basis of the pleadings of the parties. They are as under :-

i) Whether the applicants/claimants prove that the compensation offered and awarded is inadequate and unfair ? If yes.

ii) What additional compensation the claimants are entitled to?

ii-A) Whether the petitions are filed within limitation.

ii) What order and award?

2.1. The parties led evidence, oral as well as documentary to substantiate their respective cases. On the basis of the material produced before it, the learned Judge answered the issues as under :-

i) In the affirmative.

ii) In the affirmative. Additional amount towards compensation is for Rs.20=00 ps., per sq. mtr., for each agricultural land.

ii-A) In the affirmative.
ii) As per final order.

3. Thus by the said award the reference Court determined the market value at Rs.20=00 per sq. mtr for each agricultural land and directed the appellant to pay additional compensation together with all incidental and

statutory benefits. Hence, these appeals.

4. I have heard Mr. R. R. Marshall learned advocate for the appellant, Mr. A.J. Patel learned advocate for the applicants and Mr. Sunit Shah learned G.P., appearing with Mr. Niraj Soni learned advocate for respondent no. 2. It is submitted by Mr. Marshall that the references were not maintainable since they were time barred. He has submitted that the Court has failed to appreciate properly the evidence in this behalf. In his submission it was not in dispute that no notices under Section 12 (2) of the Act were served. The dispute was only with regard to the date of the service. He has, therefore, submitted that whichever the date be taken into consideration, application under Section 18 of the Act were submitted after expiry of the period of limitation prescribed under said Section. As against that Mr. A.J. Patel has submitted that there is no evidence that the notices were served under Section 12 (2) of the Act, nor was the award made available to the applicants and, therefore, the period of limitation would be six months and, the, applications were submitted within time.

5. I have carefully considered the submissions of the learned advocates. The record and proceedings of the

case are here. During the course of hearing, need to call for the original record of acquisition proceedings was felt by this Court. Hence, the Government Pleader was directed to keep the concerned officer present with the original record of the acquisition. Today he has remained present with the record. I have considered the discussion of the evidence by the Reference Court on the issue of limitation which is contained in paragraph 8 and onwards of the judgment. From the said discussion, it appears that the factor that has weighed with the Court, is that the copies produced on record of the notices under Section 12 (2) of the Act do not bear the signatures of the recipients. Hence, the appellant has failed to proved when the notices were served and whether they were served in accordance with the provisions of law. The Court has, therefore, held that the applications were made within the period of limitation and the references were maintainable. However, considering the record produced before me and also the oral evidence, it appears that the fact regarding receipt of the notices is not disputed. However, I will abstain myself from expressing any opinion in detail. Suffice it to say that certain relevant aspects on this issue have not been considered by the trial Court. It is also clear that to decide this issue properly, the parties would be required

to lead further evidence, which cannot be done here. In view of the same, it appears to me that this is a fit case where the cases be remanded to the concerned Court for its reconsideration on the issue regarding limitation. Hence the following directions.

5.1. The impugned judgment and awards are quashed and set aside. The cases be remitted to the Court for reconsideration on the aspect of limitation. The parties will be at liberty to lead evidence on that aspect, oral as well as documentary. The material that has already been brought on record will remain as it is. Upon fresh evidence that can be adduced before it and also keeping in view the material already produced, the Court will give its finding on the question of limitation. The judgment and award are quashed and set aside. However, at this stage the applicants are not required to refund the award amount. Hence, these appeals are allowed with no order as to costs. The exercise to be completed before 31st December, 2007.

6. R & P if any, to be re-transmitted to the Reference Court forthwith.

[Akshay H. Mehta, J.]

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